

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

CHRISTOPHER & SHIVANI SUTTON

Petitioners

Christopher and Shivani Sutton

For the Petition

Robert Goff

Department of Housing and
Community Affairs

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Board of Appeals No. S-2834
(OZAH No. 12-22)

Before: Tammy J. CitaraManis, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

In Petition No. S-2834, Christopher and Shivani Sutton seek approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 7307 Piney Branch Road, Takoma Park, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 20 and Part of Lot 21, Block 12, in the B.F. Gilbert's Subdivision of Takoma Park. The Tax Account number is 01061630.

On February 23, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for May 24, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated May 16, 2012, recommended approval of the special exception, with four (4) conditions. Exhibit 13.¹

A Housing Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on May 8, 2012. Housing Code Inspector Robert Goff reported his findings in a memorandum dated May 8, 2012 (Exhibit 12). The Housing Inspector concluded that occupancy must be limited to two unrelated persons or a family of two in habitable space of 334.4 square feet. Exhibit 12.

The hearing went forward as scheduled on May 24, 2012. Petitioners appeared *pro se*. Petitioners executed an Affidavit of Posting (Exhibit 15). Both testified in support of the petition and agreed to meet all the conditions set forth in the Technical Staff Report (Exhibit 13) and the Housing Inspector's report (Exhibit 12). No opposition appeared at the hearing.

The record was held open until June 11, 2012, as required by Board of Appeals Rules of Procedure 7.2.6, because the Technical Staff report (Exhibit 13) was received on May 22,

¹ The Technical Staff report is frequently quoted and paraphrased herein.

2012, less than five days prior to the hearing date. It also allowed time for Petitioners to provide a copy of their deed and for the Court Reporter to complete the hearing transcript. The record closed on June 11, 2012, with no further documents other than Petitioners' deed (Exhibit 16) and the transcript being received.

For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

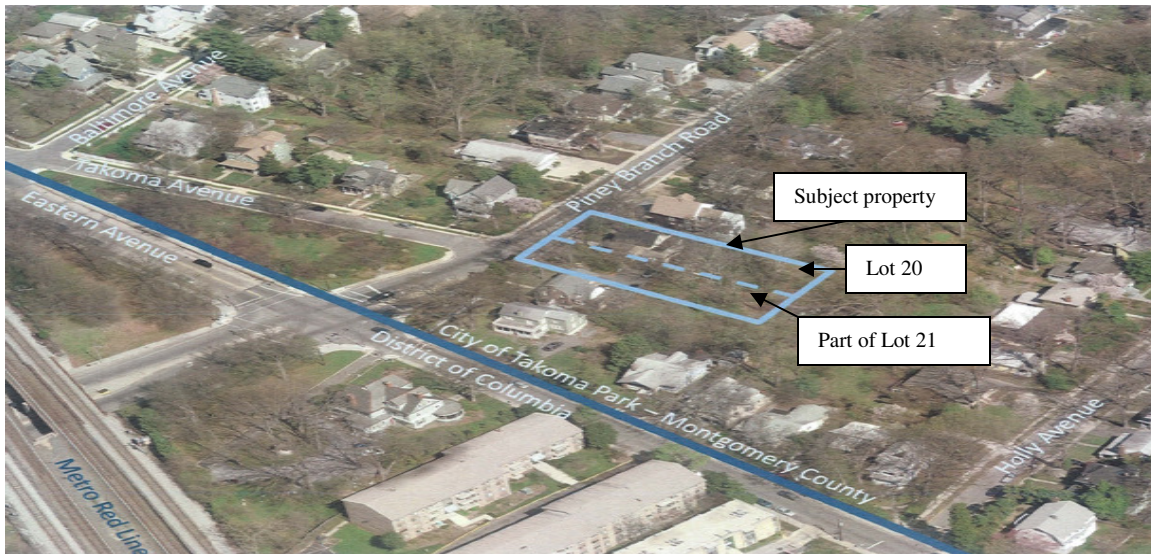
A. The Subject Property and Its Current Use

The subject property is located at 7307 Piney Branch Road, Takoma Park, Maryland, in the B.F. Gilbert's Subdivision of Takoma Park, on the southeast side of Piney Branch Road near the intersection with Takoma Avenue. It is zoned R-60 and in the Takoma Park Historic District.² A location map (Exhibit 13, Attachment 1), is shown below:



² Technical Staff advises that the property "is designated an 'Outstanding Resource' in the Master Plan-listed Takoma Park Historic District (#37/3)." Exhibit 13, p. 5.

Technical Staff reports: “The Sutton’s property consists of parts of two lots which are side by side: Part of Lot 20 (9900 sf) and Part of Lot 21 (7920 sf). The Sutton’s property therefore is a total of 17,820 sf and is so recorded as such in the Maryland state tax records³ (Liber 40031 Folio 130).” Exhibit 13, p. 7. Staff provided an aerial photograph (shown below) of the property (Exhibit 13, Attachment 2).



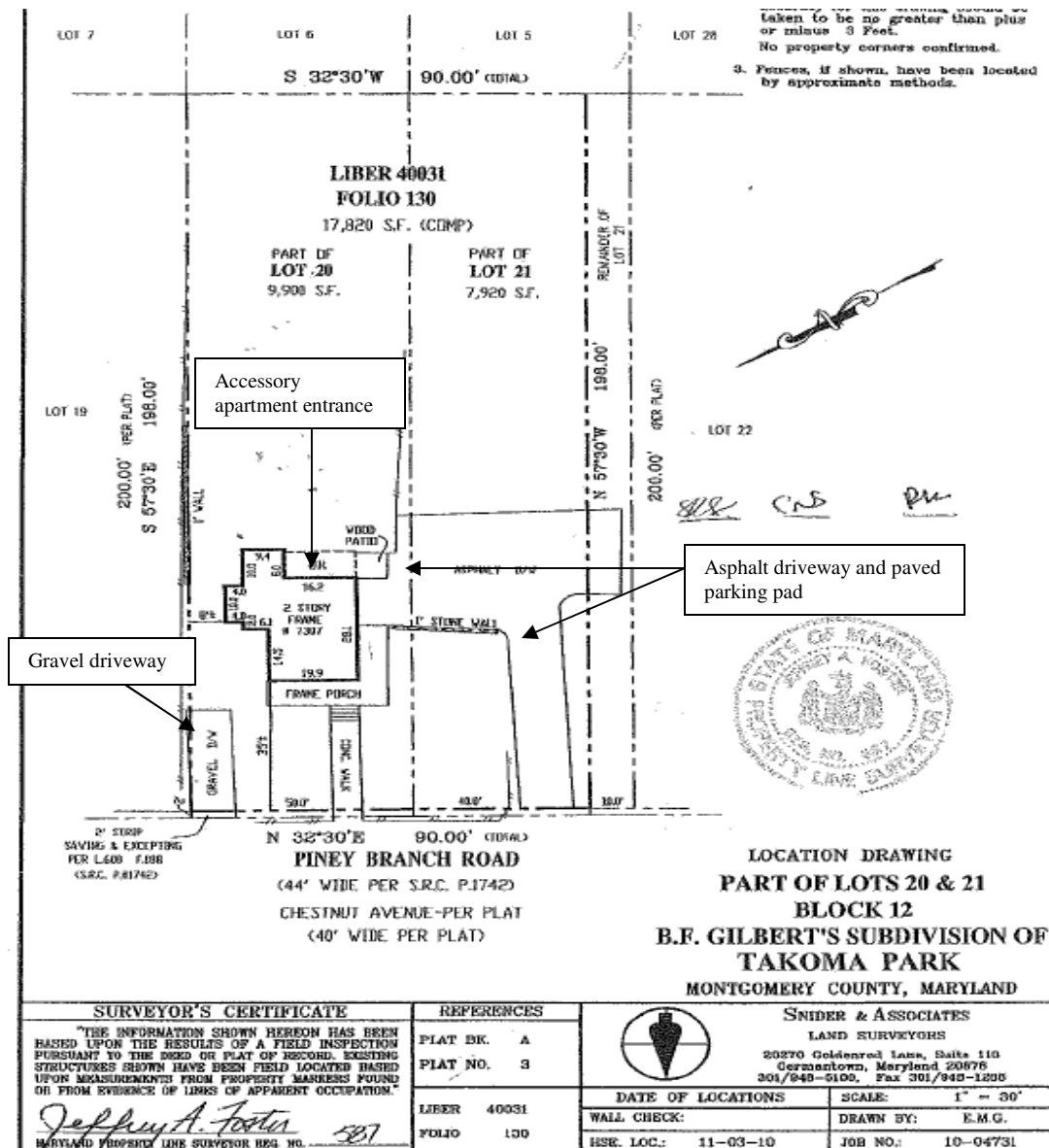
Technical Staff described the subject property as follows (Exhibit 13, p. 3):

The subject property [Lot 20] is 9,900 square feet in size and is rectangular. It is in the R-60 Zone. The existing three-level house was constructed in 1884. It has 1,416 square feet of enclosed area excluding the basement area, according to the state tax records. The house is located on the southeast side of Piney Branch Road near its T-intersection with Takoma Avenue. The lot is gently sloping from front to back. The backyard is mostly clear with some existing trees and other plant materials and is undergoing maintenance. On-street parking is allowed along both sides of Piney Branch Road and along the north side of Takoma Avenue. There are two driveways each accessed by a curb-cut from Piney Branch Road. One is directly across from Takoma Avenue with space for one car near the front door of the house. The other curb cut and driveway lead to additional parking for the existing one-family dwelling and the accessory apartment. This additional parking is on an improved area on the property

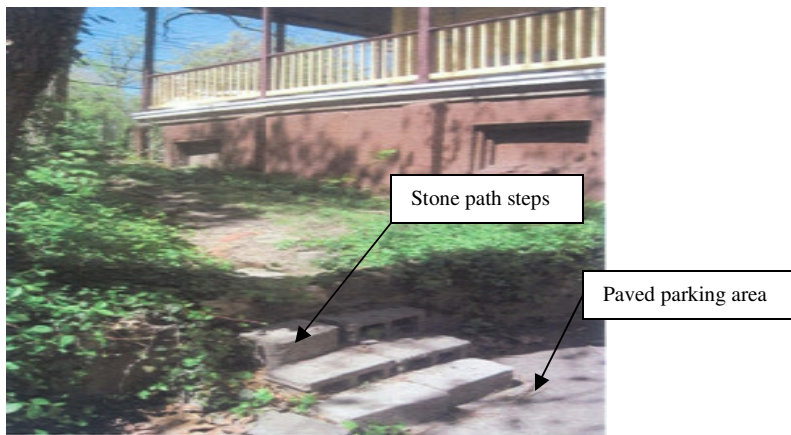
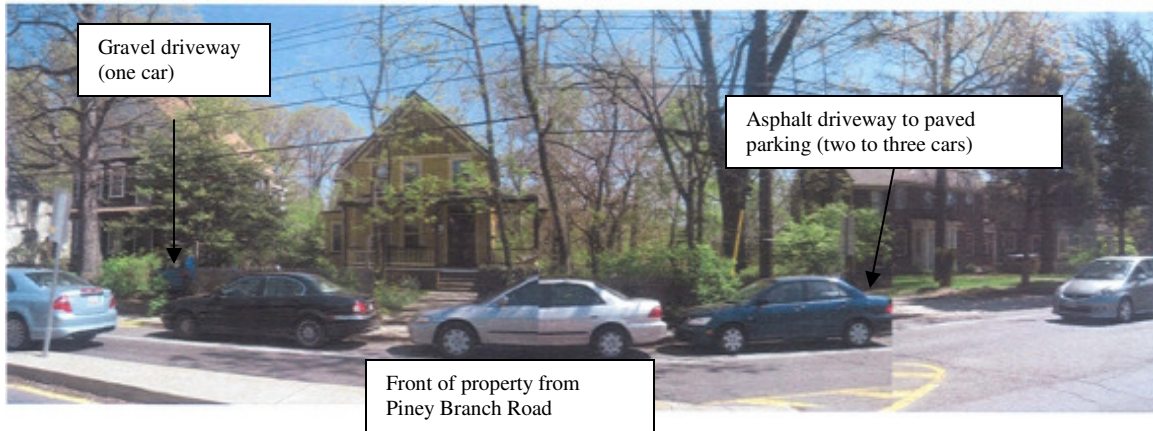
³ The Hearing Examiner hereby takes official notice of the Maryland Department of Taxation and Assessments records for this property.

[Part of Lot 21] and can accommodate two to three vehicles. It is shared with the house next door to the south, 7303 Piney Branch Road which has its own parking spaces accessed from the shared driveway.

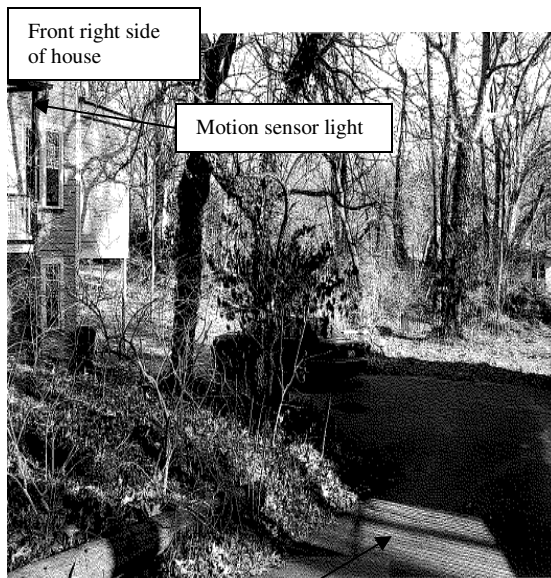
The Site Plan for the property (Exhibit 3) is shown below:



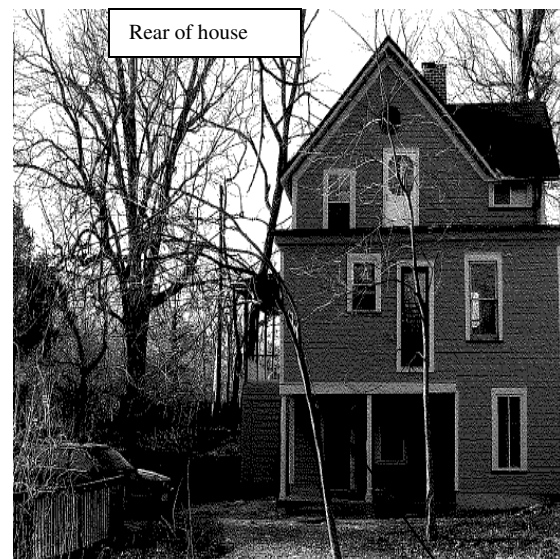
The front and rear of the home are shown below (next page) in photographs from the Technical Staff report (Exhibit 13, Attachment 5):



Petitioner provided close-up photographs of the gravel driveway in the front of the house (left of front porch) and asphalt driveway and paved parking on the right side and rear of the property (Exhibits 9(a) and (b)):



Asphalt driveway to paved parking area and shared access with adjacent property.



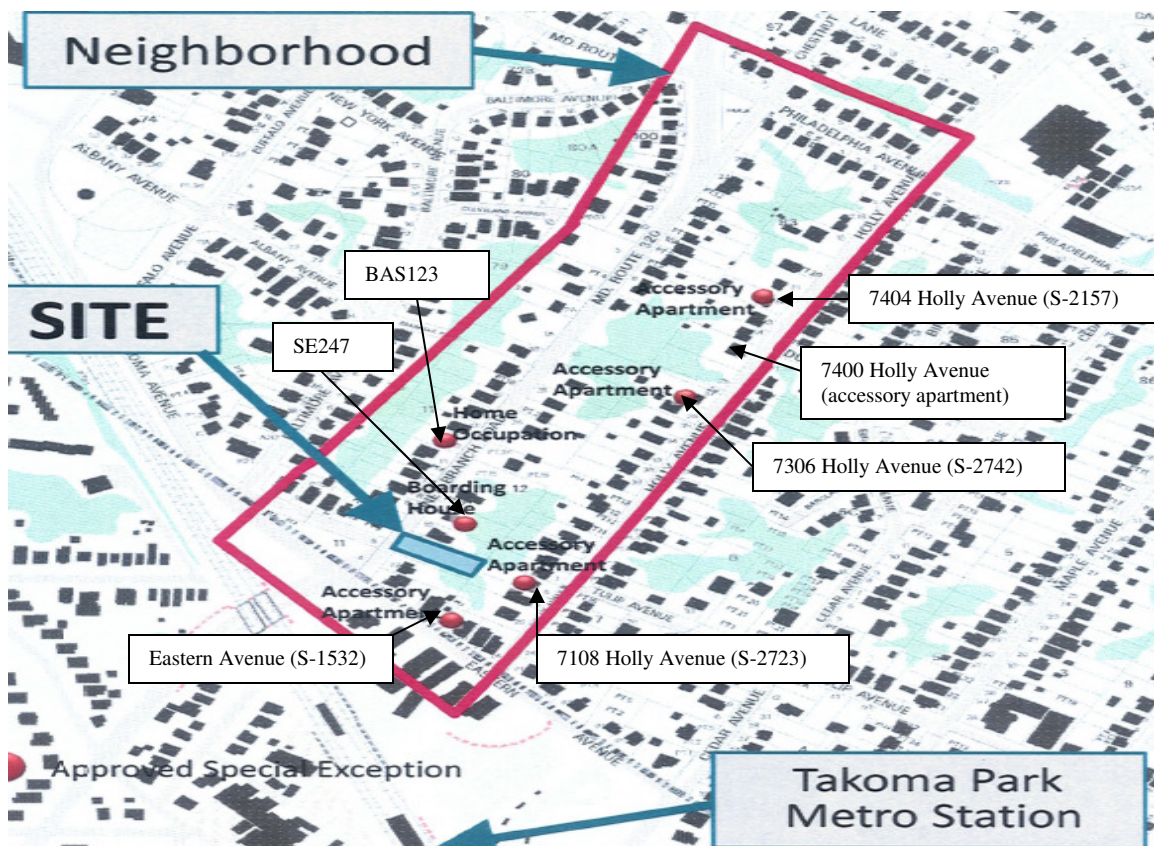
Paved parking area

Accessory apartment entrance

B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood as “generally bound by Baltimore Avenue and Holly Avenue and their intersections with Eastern and Philadelphia Avenues.” Exhibit 13, p. 4. Staff advises that “The neighborhood is made up of about 90 detached homes and several multifamily buildings on Eastern Avenue.” Exhibit 13, p. 12. The Hearing Examiner accepts Staff’s definition of the general neighborhood.

The neighborhood boundary, which is depicted with a solid line on the location map shown below (Exhibit 13, Attachment 3), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic.



Technical Staff reports: “There are six special exceptions within the neighborhood as shown on the map by solid red dots. They are: SE247 for a boarding house; S1532, S2723, S2742 and BAS2157, for accessory apartments, and BAS123 for a home occupation.” Exhibit 13, p. 4.

In a memo to the Housing Code Inspector dated May 23, 2012, Ada DeJesus with the DHCA, Licensing and Registration Unit, reported that “[i]n the direct vicinity⁴ of the property, there are nine (9) accessory apartments and there are no RLU’s.” Exhibit 14. All nine of the accessory apartments are located one block south of Piney Branch Road on Holly Avenue. DHCA did not include an accessory apartment located on Eastern Avenue (S-1532) or provide the special exception number for each property address.

However, based on their listed addresses, it appears to the Hearing Examiner that only four of the nine accessory apartments⁵ listed on Holly Avenue (house numbers 7108, 7306, 7400 and 7404) are actually located within the Staff-defined neighborhood. The accessory apartment located at 7400 Holly Avenue is the only one not identified by Technical Staff. Thus, in actuality, there are seven special exceptions, five of which are accessory apartments, within the defined neighborhood boundary.

Despite the slight increase in the actual number of existing accessory apartments within the neighborhood, the Hearing Examiner concurs with Technical Staff that the addition of the proposed accessory apartment use will not be excessive or change the

⁴ Housing Code Inspector Goff explained that DHCA generally only provides a list of active and revoked accessory apartments in the “general area” of the Petitioners’ property and does not necessarily confine the search to the Staff defined neighborhood boundary. Tr. 66.

⁵ DHCA identified five accessory apartments on the south side of Holly Avenue which is outside of the neighborhood boundary. DHCA indicated that two of the accessory apartments (house numbers 7201 and 7209) were identified as “Exempt” which the Housing Code Inspector explained meant the use was “active”. Tr. 66. DHCA identified three accessory apartments (house numbers 7203, 7209 and 7309) as being “Revoked”. Exhibit 14.

residential character of the neighborhood. Exhibit 13, p. 12. The proposed accessory apartment use should have little or no impact on the neighborhood, especially considering that the use is a residential use by definition and the accessory apartment is located in the basement of an existing dwelling. The accessory apartment entrance is not visible from the street and there is sufficient off-street parking on the property to accommodate the main dwelling and accessory apartment. All of the existing accessory apartments are located on Holly Avenue and none are located on Piney Branch Road.

Thus, even considering the possibility there are five and not four accessory apartment uses within the defined neighborhood, the Hearing Examiner concurs with Technical Staff that the proposed special exception in the neighborhood will not be excessive or change the residential character of the neighborhood.

C. The Master Plan

The subject property lies within the *Takoma Park Master Plan*, approved and adopted in December 2000. The Plan does not explicitly address the question of accessory apartments, but it does emphasize revitalizing housing and accepting a diversity of housing types in the community. Master Plan, pp. 28-29. As noted by Staff, the Plan “recommends this area for one-family residential use and confirms the R-60 Zone.” Exhibit 13, p. 4. The R-60 Zone permits accessory apartments as special exceptions. Plan Appendix B, at p. B-8 (Area D, Map 43).

Technical Staff reports (Exhibit 13, p. 4-5):

The Plan also confirms the fact that this is in the Takoma Park Historic District. (Page 35-36). The Plan recommends (page 36): “*Protect and enhance Takoma Park’s historic and architectural heritage for the benefit of present and future County residents.*” This proposal is consistent with the master plan recommendations since it is: compatible with the existing neighborhood; meets the requirements of the R-60 zone special exception

purpose and standards. Furthermore, it is designated an “Outstanding Resource” in the Master Plan-listed Takoma Park Historic District (#37/3). And, as such, any exterior alterations⁶ to the subject property are subject to Chapter 24A of the County Code, and may require a Historic Area Work Permit. The accessory apartment will have no direct adverse effect on this historic resource or others within the Takoma Park Historic District. Since the subject application furthers the Plan’s general guidance, the proposed accessory apartment is consistent with the Takoma Park Master Plan.

The Hearing Examiner agrees with Technical Staff because the Plan supports the R-60 zoning which permits accessory apartments by special exception. In addition, this accessory apartment is not visible from the street and therefore does not change the existing structure’s appearance as a single-family dwelling consistent with the surrounding neighborhood. Since the exterior of Petitioners’ home will not be changed as a result of the proposed accessory apartment use, it will retain the historic residential appearance and compatibility sought by the master plan. The Hearing Examiner finds that the proposed use is consistent with the *Takoma Park Master Plan*.

D. The Proposed Use

The Petitioners are seeking a special exception to allow an existing accessory apartment⁷ located in the basement of their single-family home. Staff advises that the accessory apartment is 486 square feet in size and includes “an additional 266 square feet of shared space with the owners of the house.” Exhibit 13, p. 4. Petitioners will occupy the main dwelling which is approximately 1,416 square feet in size. Staff estimates the total enclosed floor area for the three-level home (two levels for main dwelling and basement) is

⁶ Technical Staff reports: “The exterior of the house is undergoing improvements under the auspices of the Historic Preservation Commission. The front and side yards have adequate cover, and the rear yard is in transition due to tree removal.” Exhibit 13, p. 1.

⁷ In their written statement in support of their Petition (Exhibit 4), Petitioners’ state: “For official purposes, this is a new accessory apartment; in actuality, however, the home has been both a simple rental home and a multi-unit group home for the past 35 years, saving the past 24 months. We have owned the property for the past 14 months, since December 2010.” During the hearing, Mr. Sutton stated that the property was being used as a boardinghouse prior their ownership. Tr. 30-31.

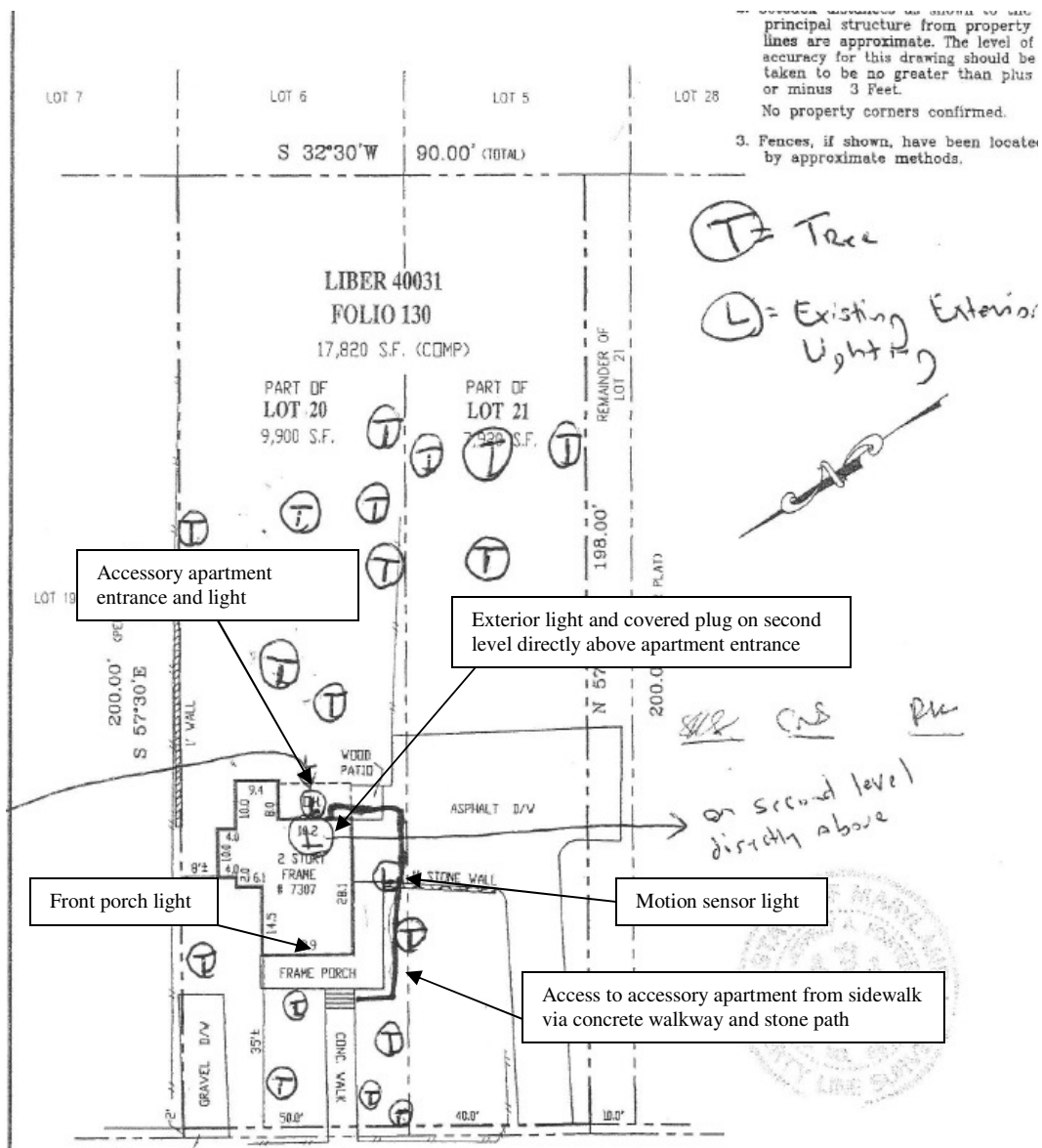
approximately 2,168 square feet and therefore concluded that the 486 square feet accessory apartment is subordinate to the main dwelling. Exhibit 13, p. 16.

The apartment is a separate living unit with its own exterior entrance located in the rear of the home. The accessory apartment entrance walks out onto a small covered wooden porch⁸ and is illuminated with a porch light that Staff indicated was adequate and residential in character. Technical Staff found “the accessory apartment entrance is clearly distinct from the entrance to the main dwelling and has the appearance of a typical rear entry into a one-family home.” Exhibit 13, p. 4.

Access to the accessory apartment from the public sidewalk on Piney Branch Road is via a concrete walkway to a stone path to the right of the front porch steps. This path traverses the perimeter of the front and side yard to two steps that connect to the paved parking area adjacent to the rear porch which provides direct access to the accessory apartment entrance. This path and access to the accessory apartment, located in the rear of the dwelling, can be seen in photographs previously shown on pages 6-7 of this report.

The existing landscape and lighting for the property is shown on the next page of this report on the Landscape and Lighting Plan (Exhibit 6). Petitioner modified the Plan to show access from the public sidewalk to the accessory apartment and an additional light directly above the accessory apartment entrance on the second level (left of door). Additional lighting is located to the left of the front door to the main dwelling and to the right of the accessory apartment entrance. A motion sensor light is located on the south rear corner of the house near the end of the front porch.

⁸ Petitioner identified this area as the “patio” on the Floor Plan (Exhibit 5).



Technical Staff found the proposed accessory apartment use “will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 13, p. 11. However, as a condition of approval (condition # 4), Technical Staff found: “To ensure that the accessory unit has a good connection to the public sidewalk and has access to transit, a lighted path that meets the building code should be provided along the side of the

house to the door of the accessory apartment unit.”⁹ Exhibit 13, p. 6. Staff advised: “When conditions are met to improve the path from the accessory unit to the public sidewalk, the plan will fall within the standards expected for a typical one-family home.” *Id.*

Petitioners believe that the motion sensor light located on the right rear corner of the house at the end of the front porch illuminates the stone path and paved parking area.

Petitioners indicated they were amenable to adding another exterior light to the side of the house for this purpose. However, Petitioners questioned whether there are alternative options to installing another exterior light to the side of the home given its historical designation and required approval process from the Historic Preservation Commission. Tr. 50. The Housing Code Inspector advised Petitioners that low voltage ground lighting (i.e., solar garden lights) along the stone path would be acceptable and in accordance with the building code. Tr. 51-53.

Based on this evidence, the Hearing Examiner finds that the existing motion sensor lighting on the rear corner of the house illuminates the stone path steps to the paved parking area and accessory apartment entrance. With the exception of the front porch light (left of door) which may illuminate a portion of the front concrete walkway, the stone path along the front and side yards to the steps is not adequately illuminated. Thus, the Hearing Examiner concurs with Staff that the path must be illuminated for safe access from the sidewalk to the accessory apartment and finds that ground lighting, as suggested by the Housing Code Inspector, is an appropriate and reasonable solution given the home’s historic designation.

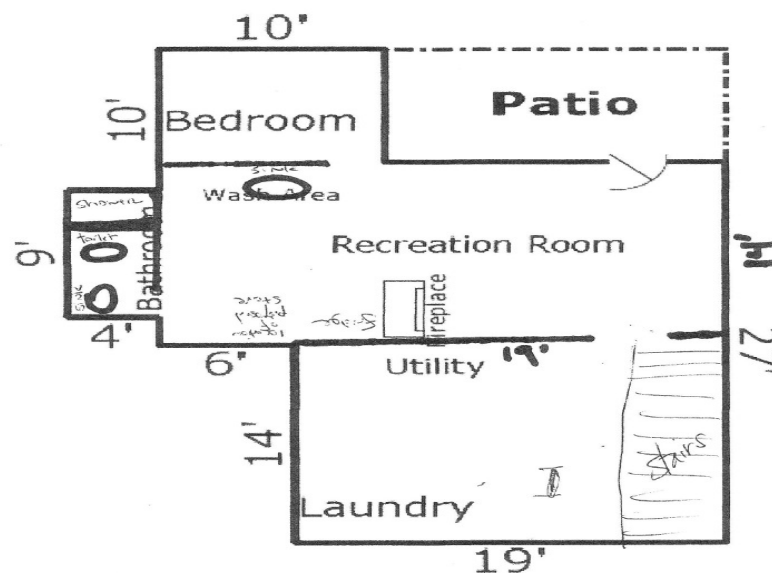
⁹ The Hearing Examiner believes that this condition, as written, could be interpreted to require the installation of a pathway from the sidewalk to the accessory apartment entrance. However, the evidence presented clearly shows an existing path from the public sidewalk via a concrete walkway to a stone path along the front side yard leading to the paved parking pad next to the accessory apartment entrance. Thus, the Hearing Examiner interprets this condition to require Petitioner to install exterior lighting to illuminate the path for safe access to the accessory apartment entrance. The Housing Code Inspector agreed with this interpretation. Tr. 65.

DHCA inspected the property on May 8, 2012, and Housing Code Inspector Robert Goff reported his findings in a memorandum dated May 8, 2012 (Exhibit 12). The substance of his report is set forth below:

The preliminary inspection was conducted on May 8, 2012. The Accessory Apartment is located in the cellar of the house. The issues regarding Accessory Apartment standards are as follows:

1. Install egress window in bedroom. Window must be at least 5 square feet net clear opening.
2. Install range and range hood in kitchen. Range hood must vent to the exterior of the building.
3. Install door knob on door going into laundry room.
4. The Accessory Apartment is 334.4 square feet. 150 square feet per person and 100 square [feet] for each additional person 2 unrelated or a family of 2 may live in the unit.
5. There is off street parking for 4 cars at the property. Street parking is permit only.

The accessory apartment's Floor Plan, as modified by Petitioner to show the stairs to the main dwelling, is shown below (Exhibit 5):



As shown above, the accessory apartment's 334.4 square feet of habitable space

includes a kitchen and living room area,¹⁰ one bedroom, and a bathroom. The accessory apartment tenants will have secured access to approximately 266 square feet of shared space (laundry and utility room) with the owners.

Petitioners indicated that the bedroom window, as shown in a photograph of the rear of the home on page 6 of this report, is a “French” window that opens into the bedroom and is secured with a latch. On the exterior of the bedroom window is a storm window. The Housing Code Inspector indicated that in order to preserve the existing window,¹¹ instead of installing a new egress window (item #1), Petitioners could remove the storm window and repair the existing window to make it weather tight and secure it by replacing the latch with a more secure window lock. Tr. 32-33.

The Housing Code Inspector confirmed Staff’s finding that there are four off-street parking spaces. Tr. 61. Mr. Goff also noted there was on-street parking in front of the home (Piney Branch Road) which he believed was by permit only. Petitioners clarified that Piney Branch Road is a State road and as a result, did not require a parking permit. However, a parking permit is required for Takoma Avenue. Mr. Goff indicated he would follow-up to confirm whether a parking permit is required for Piney Branch Road. Tr. 62.

Petitioners testified that they only have one vehicle and park it on the one-car gravel driveway as can be seen in the photograph Exhibit 9(b) on page 6 of this report. Petitioners confirmed that the tenants will be able to park on the paved parking area which is accessed via the shared driveway¹² and adjacent to the accessory apartment entrance and porch. Based on

¹⁰ This area is identified as “recreation room” on the Floor Plan (Exhibit 5).

¹¹ Mr. Sutton indicated that they have restored several windows in the house and believed, based on a prior conversation with Mr. Goff, that the existing window could be modified (remove storm window) and repaired (make weather tight and install new lock) instead of installing a new window. Tr. 33. .

¹² The asphalt driveway and paved parking area is located on Part of Lot 21 which is owned by the Petitioners. According to the Petitioners, the neighbors use the shared driveway to access their property (Lot 22-7303 Piney Branch Road) and separate parking area (carport) for their two vehicles. Tr. 44-45.

this information, the Hearing Examiner concurs with Staff's finding that there is adequate off-street parking for the main dwelling (gravel driveway) and accessory apartment (paved driveway). Exhibit 13, pp. 1 and 9.

Mr. Goff reported that for many years prior to Petitioners' ownership, DHCA had received numerous complaints from residents in the neighborhood about the poor condition of the property which he described as a "visual blight." Tr. 63. Mr. Goff complimented the Petitioners for the improvements they have made to the property which in his opinion has improved the value of the home as well as the visual appearance of the neighborhood. He further noted that the proposed accessory apartment use does not change the residential character of the home or neighborhood. Tr. 63-64.

E. Traffic Impacts

Technical Staff found that "the proposed special exception meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance." Exhibit 13, p. 5. Transportation Staff reported (Exhibit 13, Attachment 7):

Using trip generation rates included in the *Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines*, the single-family dwelling on the property is estimated to generate one peak-hour trip during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Using the same rates, the accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods.

Since the existing house and the accessory apartment together will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition. With documentation of site trip generation as above, the subject property satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

As noted above, the single-family dwelling and the accessory apartment on the property together will generate less than four peak-hour trips during

the weekday morning and evening peak periods. The subject petition is therefore not subject to the PAMR requirements of the APF test.

Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impacts on the area roadways and pedestrian facilities. There being no evidence in the record to the contrary, the Hearing Examiner so finds.

F. Environmental Impacts

Petitioners do not propose any external changes to the site other than the installation of approved exterior lighting on the side of the property (Technical Staff condition #4) and restoration of the rear bedroom window (Housing Code Inspection item #1). Technical Staff noted: “The exterior of the house is undergoing improvements under the auspices of the Historic Preservation Commission. The front and side yard have adequate plant cover, and the rear yard is in transition due to tree removal.” Exhibit 13, p. 1. Staff also noted that Petitioners are not proposing any new plantings.

Technical Staff advises “There are no environmental issues or concerns associated with the applicant’s proposed accessory apartment. The site is exempt from the forest conservation law because it is less than 40,000 square feet in size.” Exhibit 13, p. 6. Based on this evidence, the Hearing Examiner finds that Petitioners’ request will have no adverse environmental impacts.

G. Community Response

There has been no response from the community, either positive or negative, to the subject petition.

III. SUMMARY OF THE HEARING

Petitioners, Christopher and Shivani Sutton, testified at the public hearing in support of the petition. DHCA Housing Code Inspector, Robert Goff, also testified as to compliance with the Housing Code. There was no opposition at the hearing.

A. Petitioners' Case

Petitioners Christopher and Shivani:

Petitioners executed an Affidavit of Posting (Exhibit 15). Petitioners adopted the findings and conclusions in the Technical Staff report (Exhibit 13) as their own evidence and agreed to comply with all the conditions set forth in the report. Tr. 12. Petitioners agreed with the findings and conclusions of the Housing Inspector's report (Exhibit 12) and agreed to meet all the conditions set forth therein. Tr. 13. Further, Petitioners acknowledged they understood and agreed with the Housing Inspector's finding that occupancy is to be limited to no more than 2 unrelated people or a family of two based on a total habitable space of 344.4 square feet. Tr. 36-37. Petitioners expressed their intent to have only one occupant living in the accessory apartment. Tr. 18.

Petitioners purchased the property in December 2010¹³, and the deed was recorded in April 2011. Tr. 16-17. Prior to their ownership, the home was a rental property for 35 years and had been used as a boardinghouse. The accessory apartment existed at the time of purchase, and prior to that time the basement was being used (illegally) as a separate living area. Tr. 30-31. Petitioners indicated that several of the neighbors have verbally confirmed their support of Petitioners' special exception request. Tr. 16. Petitioners identified the Site

¹³ Petitioners indicated they settled on the property on December 23, 2010. Tr. 17.

Plan (Exhibit 3), Landscape and Lighting Plan (Exhibit 6), photographs of the premises¹⁴ (Exhibit 9 (a)-(b)), and the Floor Plan (Exhibit 5).

The front and rear views of the home are shown in photographs in Exhibit 9(a). The accessory apartment is located in the rear of the property and is illuminated by a porch light to the right of the entrance which has a small wooden porch. To the left of the rear porch is a paved parking area off the asphalt driveway which Mr. Sutton identified as the top photograph of Exhibit 9(b). Tr. 22. Petitioners stated that the paved parking area can accommodate two to three vehicles. Tr. 44 and 47-48. This area is illuminated by a motion sensor light located near the rear side corner of the house. Tr. 27 and 29. Petitioners testified that they own the driveway (located on Lot 21) which has shared access with the adjacent neighbors. The neighbors use the driveway only to access their property and separate parking (carport). Tr. 44-45.

Petitioners indicated that they park their only vehicle on the gravel driveway located in the front right corner of the property as shown in Attachment 4 of the Technical Staff report. Tr. 43. Additional on-street parking is available on both sides of Piney Branch Road and on Takoma Avenue. Petitioners clarified that while parking on Takoma Avenue is by permit only, a parking permit is not required for Piney Branch Road because it is a State road. Tr. 46. Petitioners have not had to obtain a parking permit because they have ample parking on their property which will also accommodate parking for their tenant. Tr. 47.

Petitioners modified the Landscape and Lighting Plan (Exhibit 6) to show an additional light to the left of the door on the second level, directly over the accessory apartment door in the rear. Tr. 26. Petitioners also identified the existing access from the

¹⁴ Mr. Sutton testified he took the photographs (front, side and rear views) of the property between September 2011 and January 2012. Tr. 21.

public sidewalk to the accessory apartment (e.g., front concrete walkway to stone path to paved parking to accessory apartment entrance and porch). Tr. 54-56.

Petitioners indicated that the motion sensor light on the rear corner of the house illuminated the stone path and the paved parking area. Tr. 29. However, Petitioners agreed to provide additional exterior lighting to illuminate the existing stone path on the side of the house as required by Technical Staff (condition #4). Petitioners questioned whether there were alternative options to installing an additional exterior light mounted on the side of the house given the property's historical designation and required approval process. Tr. 50. The Housing Code Inspector advised that ground lights (i.e., solar garden lights) along the existing stone path would be an acceptable way to comply with Staff's condition that the path be lighted. Tr. 51-52.

Referring to the Floor Plan (Exhibit 5), Petitioners identified the utility and laundry room area, located in the basement, which will be shared with the main dwelling. Petitioner will install a door knob on the laundry room door accessed from the accessory apartment. Tr. 35-36. Petitioners will access the laundry room using the stairs from the main dwelling to the basement. Tr. 38-41. Petitioners confirmed their understanding that the bedroom was the only designated sleeping area. Tr. 37.

Petitioners indicated that the bedroom window (facing the backyard) is a French window that opens into the bedroom and is secured with a latch. A storm window was installed on the exterior side of the window. Petitioners indicated that the Housing Code Inspector told them during the inspection that the issue with the window was the storm window and not the original window. Petitioners sought clarification from the Housing Code Inspector at the hearing on whether they could satisfy item # 1 (install egress window in

bedroom) by removing the storm window and retaining the original window. As noted below in the summary of the Housing Code Inspector's testimony, Mr. Goff confirmed that Petitioners could modify (by removing storm window) and repair the existing bedroom window (sealing and securing it) instead of installing a new window (item #1). Tr. 32-34.

Petitioners agreed to install a range and range hood (vented to the outside) in the kitchen. Tr. 34.

B. Public Agency Testimony

Housing Code Inspector Robert Goff:

Housing Code Inspector Robert Goff testified that he inspected the property on May 8, 2012, and reported his findings in a memorandum dated May 8, 2012 (Exhibit 12). Based on the square footage of the bedroom, he concluded that the accessory apartment may be occupied by no more than 2 unrelated persons or a family of two. Tr. 61. Mr. Goff confirmed that the issue with the existing bedroom window facing the backyard, identified as a "French" window by Petitioners, was the storm window installed on the exterior. Mr. Goff instructed Petitioners: "If you take the storm window off . . . the window size would be big enough but then you would have to make the one that opens weather tight and secure." Tr. 33. Mr. Goff confirmed removing the storm window and repairing the original window to make it weather tight (no gaps) and secure (replace latch with window lock) would satisfy item # 1 in the inspection report. Tr. 64 and 65.

Mr. Goff also noted the Petitioners needed to install a laundry room door knob (item #2) to secure access to the accessory apartment and install a range and properly vented range hood in the kitchen (item #3). Tr. 39. He also confirmed Staff's finding that there was space for four vehicles on the property and the availability of on-street parking in front of

Petitioners' home (Piney Branch Road) which he believed was by permit only. However, Mr. Goff indicated he would follow-up to confirm Petitioners' testimony that a parking permit on Piney Branch Road is not required. Tr. 62.

Mr. Goff confirmed Petitioners' testimony that there is access to the accessory apartment from the public sidewalk on Piney Branch Road via a concrete walkway and stone path along the front and side of the property. He also informed Petitioners that ground lights (i.e., solar garden lights) along the path would be acceptable to meet Staff's requirement (condition #4) that the existing path be lighted. Tr. 50-51 and 57-65.

Mr. Goff testified that prior to Petitioners' ownership the property was in poor condition which he described as a "visual blight" in the neighborhood. This resulted in numerous complaints to DHCA from the neighbors. He complimented Petitioners for the various improvements they have made to the property which he stated "really improved the value of the property and the community over there." Tr. 63. He also stated that the accessory apartment will not change the residential character of the neighborhood. Tr. 64.

Mr. Goff reviewed the internal memo (Exhibit 14) from Ada DeJesus (DHCA Licensing and Regulation Unit) which identified nine accessory apartments (active and revoked) within the general vicinity of Petitioners' property and was not limited to the Staff-defined neighborhood boundary. He explained that the term "Exempt" meant an accessory apartment was active. In this case, he confirmed that Ms. DeJesus identified four active accessory apartments within the neighborhood boundary, all located on the north side of Holly Avenue and five accessory apartments, two active and three revoked, outside the neighborhood boundary and located on the south side of Holly Avenue. Tr. 66-69.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception if they comply with the recommended conditions. Exhibit 13.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use as long as Petitioners comply with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and in the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects,

alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 13, pp. 8-9):

- (1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) The provision within the apartment of the necessary facilities and spaces and floor area to qualify as habitable space under the applicable code provisions;
- (3) A separate entrance and walkway and sufficient exterior lighting;
- (4) Sufficient parking;
- (5) The existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) The potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family

residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows (Exhibit 13, p. 9):

The apartment will be located in the basement of the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit has a separate entrance apart from the main dwelling. The apartment entrance is typical of a rear-entry to a one-family house, making it difficult to distinguish from any other neighborhood home. Once improved as recommended in Condition #4, the walkway and grounds of the accessory apartment will be safe and illuminated while consistent with typical residential standards.

Parking for the accessory apartment will be sufficient. There is space for two to three cars to park in the paved area at the back of the house. There is also space for parking in a short driveway in the front. There are adequate choices to ensure sufficient neighborhood parking even with the existence of an additional household on the block.

Based on these findings, Staff concluded (Exhibit 13, p. 10):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no adverse effects present in this case.

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concurs with Technical Staff and concludes that there are no non-inherent adverse effects from the proposed use.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient

evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions.

§59-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. For reasons set forth in Part II.C of this

report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 zone, is consistent with the goals and objectives of the *Takoma Park Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed special exception would be in harmony with the general character of the neighborhood especially considering no structural changes to the home or existing parking are proposed to accommodate the accessory apartment. The accessory apartment is fully contained in the basement of an existing dwelling with a separate entrance typical of a rear entrance for a one-family home. Occupancy will be limited to no more than a family of two or two unrelated persons and therefore will have only minimal impact on population density. There is sufficient off-street parking for four vehicles on the property to accommodate the owners and tenants. Petitioners will park their only vehicle on the gravel driveway in the front of the property. The paved parking area can accommodate between two and three vehicles. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. Based on a combined reading of reports by Technical Staff (Exhibit 13) and DHCA (Exhibit 14), there are five approved accessory apartments (one on Eastern Avenue and four on Holly Avenue) located within the Staff-defined neighborhood. As discussed in Part II.B. of this report, and

for the reasons stated therein, the Hearing Examiner finds that the addition of the proposed accessory apartment will not be excessive or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the answer to the previous section of this report (Part IV.B.4), the Hearing Examiner agrees and finds that the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that “[b]ased on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity” and “[t]he use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 13, p. 11. The Hearing Examiner agrees with Technical Staff that the proposed lighting is residential and concurs that “[o]nce improved as

recommended in Condition #4 [lighted path], the walkway and grounds of the accessory apartment will be safe and illuminated while consistent with typical residential standards.” Exhibit 13, p. 9. Since the use will be indoors and residential, the Hearing Examiner finds it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Because the proposed use is a residential use by definition, the special exception will not alter the predominantly residential nature of the area. As discussed in Part II.B. of this report, and for the reasons stated therein, the Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that “[t]he proposed special exception will be adequately served by existing public services and facilities.” Exhibit 13, p. 13.

The evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception’s impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case will not require approval of a preliminary plan of subdivision. Exhibit 13, p. 13. Therefore, the Board must consider whether the available public facilities and services will be adequate

to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the availability of adequate off-street parking and the limited number of additional trips generated by the special exception, the Hearing Examiner concurs with Technical Staff and finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic. Exhibit 13, p. 13.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 13), provide sufficient evidence that the specific standards required by Section 59-

G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The accessory apartment is located in the basement of an existing one-family detached dwelling and therefore shares a wall in common, as required for a lot of this size (under one acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in the basement of an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: Technical Staff found that “state tax records confirm that the house was built in 1884.” Exhibit 13, p. 15. It therefore meets the “5 year old” requirement.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection. Also, a requirement that the occupancy of both the main house and the accessory apartment meet all Code requirements will be a condition of this approval.

- (6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through an existing separate entrance located in the rear of the dwelling. The entrance, according to Staff, “has the appearance of a typical rear-entry to a one-family home.” Exhibit 13, p. 15. Thus, there will thus be no change to the residential appearance of the dwelling.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling. However, as required by the reports from the

Technical Staff (Exhibit 13) and Housing Code Inspector (Exhibit 12), Petitioner will make two minor modifications to the exterior of the dwelling as follows: illuminate the existing path on the side of the home to provide safe access from the public sidewalk to the accessory apartment entrance (Staff condition #4); and install an egress window in the accessory apartment bedroom (Housing Code Inspector item #1). During the hearing, the Housing Code Inspector advised that low voltage ground lighting (i.e., solar garden lights) along the stone path is an acceptable form of residential lighting to satisfy Condition #4. Additionally, the Housing Code Inspector indicated that Petitioners may modify (remove storm window) and repair (make weather tight and install window lock) the existing bedroom window instead of installing a new egress window (item #1 of Housing Inspector's report). The Hearing Examiner finds that these minor changes, necessary for residential occupancy, will not affect the residential nature or historic designation of the structure.

- (8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.*

Conclusion: The accessory apartment, at 486 square feet, 344.4 square feet of which is habitable, is under the maximum 1,200 square feet restriction. The accessory apartment will have access to an additional 266 square feet of shared space (laundry and utility room) with the owners. Staff estimated the total enclosed floor area of the Petitioners' existing one-family dwelling to be approximately 2,168 square feet. The Hearing Examiner finds, as did Technical Staff, that the accessory apartment is subordinate to the main dwelling.

59-G § 2.00(b) *Ownership Requirements*

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioners will live in the main dwelling on the property.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed (Exhibit 16) submitted into the record, Petitioners purchased the property on December 22, 2010. Technical Staff reported that “[a]ccording to Maryland Tax records, the applicant took ownership of the property on April 20, 2011.” Exhibit 13, p. 17. Petitioners testified that they settled on the property in December 2010. Petitioners believed that the April, 2011 date referred to in the Staff report was the date the deed was recorded. Tr. 16. A review of the deed shows it was dated December 22, 2010, and initially recorded with the Clerk’s office in January 2011. It also appears that

the deed was re-recorded in April 2011 to correct the property description to include Petitioners' ownership of both Lot 20 and Part of Lot 21. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Petitioners submitted a deed (Exhibit 16) dated December 22, 2010, evidencing joint ownership of the subject property. Therefore, the Hearing Examiner concludes that this condition has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: As discussed in Part II.A. of this report, Petitioners' property includes two side by side lots. Lot 20 is 9,900 square feet and the part of Lot 21 is 7,920 square

feet. The total size of the property is 17,820 square feet.¹⁵ According to Technical Staff, the existing one-family dwelling, located on Lot 20, was constructed in 1884.¹⁶ Exhibit 13, p. 3. As noted by Staff: “The subject property is located in the R-60 zone, which permits the proposed special exception. The Zoning Ordinance in Section 59-B-5.3(a) calls for the use of the development standards from the 1928 Zoning Ordinance due to the fact that the lot was recorded prior to March 16, 1928.” Exhibit 13, p. 7. According to Technical Staff, the proposed special exception “conforms to all applicable development standards of the 1928 Zoning Ordinance.” *Id.* The following table summarizes the relevant development standards for the proposed special exception application (Exhibit 13, pp. 7-8):

Development Standard	Required	Provided	Applicable Zoning Provision
Maximum Building Height	40 feet or 3 stories	Less than or equal to 40 feet or 3 stories	1928 Zoning Ordinance § 3 Article 59-B Attachment
Minimum Lot Area	5,000 sq. ft.	9,900 sq. ft. ¹⁷	"
Minimum Lot Width at Front Building Line	50 ft.	50 ft.	"
Minimum Setback from Street	25 ft.	35 ft.	"
Minimum Side Yard Setback	7 ft.	8 ft.	"

¹⁵ For zoning purpose, Petitioners’ property is treated as one lot because it consists of more than one record lot and the existing dwelling was constructed prior to October 1967.

¹⁶ Technical Staff indicated on page 7 of the staff report (Exhibit 13) that “[t]he lot was recorded in 1886.”

¹⁷ As noted in footnote number 3 in the Technical Staff report, Staff advises “for this analysis of development standards, the characteristics of the existing house which is entirely on ‘Part of Lot 20’ are evaluated.” Exhibit 13, p. 7.

Minimum Rear Yard Setback	20 ft.	125 ft.	"
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	486 sf + 266 shared sf = 752 sf.	§ 59-G-2.00(a)(9)

(2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: The Staff-defined neighborhood consists of approximately 90 single family homes. Based on a combined reading of reports from Technical Staff (Exhibit 13) and DHCA (Exhibit 14), there are seven existing special exception uses -- five accessory apartments (one located on Eastern Avenue and four on Holly Avenue), one boarding house and a home occupation (on Piney Branch Road) -- within the neighborhood boundary. As discussed in Part II.B. of this report, and for the same reasons stated therein, the Hearing Examiner concurs with Technical Staff opinion that “[t]he proposed accessory apartment, if granted, will not result in an excessive concentration of similar uses in the general neighborhood.” Exhibit 13, p. 18.

(3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*

- (i) *More spaces are required to supplement on-street parking; or*
- (ii) *Adequate on-street parking permits fewer off-street spaces.*
Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: As discussed in Part II.B of this report, there are four off-street parking spaces on the property. There is one parking space on the gravel driveway located on the front left side of the house which is where Petitioners park their only vehicle. The paved parking pad, located in the rear of the house and off the shared asphalt driveway, can accommodate two to three vehicles. Technical Staff also found that “[t]here are adequate choices to ensure sufficient neighborhood parking even with the existence of an additional household on the property.” Exhibit 13, p. 9. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) parking spaces has been met and there is sufficient off-street parking to accommodate the main dwelling and accessory apartment.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in Article 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector’s report (Exhibit 12) notes certain issues and recommends that occupation of the accessory apartment be limited to no more than two unrelated persons or a family of two. As mentioned above, Petitioners have agreed that no more than two people will live in the accessory apartment and they will meet all conditions, including making the repairs required by the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Christopher and Shivani Sutton, BOA No. S-2834, which seeks a special exception for an accessory

apartment to be located at 7307 Piney Branch Road, Takoma Park, Maryland, be

GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 12):
 - a. Install egress window in bedroom. Window must be at least 5 square feet net clear opening. Pursuant to the Housing Code Inspector's testimony during the hearing, Petitioner has the option of preserving the existing bedroom window ("French" window) instead of installing a new window with the following conditions: 1) Petition must remove the exterior storm window; and 2) repair the existing window to make it weather tight and secure by replacing the latch with a secure window lock.
 - b. Install range and range hood in kitchen. Range hood must vent to the exterior of the building.
 - c. Install door knob on door going into laundry room.
 - d. The Accessory Apartment is 334.4 square feet. 150 square feet per person and 100 square feet for each additional person. 2 unrelated or a family of 2 may live in the unit.
 - e. There is off-street parking for 4 cars at the property. Street parking is by permit only.
3. The Petitioners must comply with the conditions set forth in the Technical Staff report (Exhibit 13), including condition #4 as follows: the applicant must provide a lighted path that meets the building code along the side of the house from the door of the accessory apartment unit to the public sidewalk. Pursuant to the Housing Code Inspectors testimony during the hearing, low voltage ground lights (i.e., solar garden lights) along the existing path would be acceptable lighting that meets the building code;
4. The Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
6. The Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
7. The Petitioners must maintain one of their four off-street parking spaces solely for

- the use of the occupant or occupants of the accessory apartment;
8. The Petitioners must submit any proposed future exterior modifications on any portion of the subject property to the Historic Preservation Commission and the Historic Preservation Section of the MNCPPC for their review and approval prior to the commencement of such modifications;
 9. The Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: July 11, 2012

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tammy J. CitaraManis". The signature is fluid and cursive, with the first name "Tammy" being more legible than the last name "CitaraManis".

Tammy J. CitaraManis
Hearing Examiner